Supreme Court, U.S.
FILED
SEP 13 2010
OFFICE OF THE CLERK

No. 09-1474

IN THE

Supreme Court of the United States

JAMES DICKEY,
Petitioner
v.

INSPECTIONAL SERVICE DEPARTMENT of the, CITY OF BOSTON,
Respondent.

In Petition For A Writ Of Certiorari to The United States Court of Appeals for the First Circuit

REPLY BRIEF FOR THE PETITIONER

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Reply Brief of the Petitioner

The Massachusetts Sanitary Code does not allow for the physical taking of a building when it is condemned/found uninhabitable pursuant to 410.831 of the Massachusetts Sanitary Code.[1] The Sanitary Code states that the property owner is required to secure the building when a secure order is issued. *105 C.M.R. 410.831(e).* While the Respondent, ("City"), has deviated from the condemnation process as outlined in the Sanitary Code and now includes the seizing/physical taking property when a building is condemned, the City has yet to revise their condemnation notice and subsequent hearing to include the physical taking of the property. See *Order of U.S. District Court, attached as Appendix B to Petition for Writ of Certiorari (hereinafter "App. B.") at page 17a.* ("City [does] not ... provide ... notice [of taking]").

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[1] To justify the City's seizure of the Petitioner's building the lower court appears to rely on 105 C.M.R. § 400.200(B) of the Mass. Sanitary Code, which provides: "the board of health or its authorized agent ... may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action be taken as the board of health deems necessary..." *105 C.M.R. § 400.200(B).* But, 400.200(B) is essentially a restatement of the Community Caretaking Doctrine, which requires the City to withdraw once the emergency has abated, (*Michigan v. Clifford*, 464 U.S. 287 (1984); *Michigan v. Tyler*, 436 US 499 (1978)). Section 400.200(B) does not allow for the seizure/physically taking of a building after the emergency has been abated.

The Petitioner argues that constitutional rights are violated because the City fails to provide separate notice and hearing for the seizure/physical taking of property,[2] but the lower court (unbelievably) found this argument unpersuasive, indicating that: "ISD's actions in ... assuming control over the Property occurred as part of the condemnation process, and that nothing prevented the [Petitioner] from challenging these actions at the condemnation hearing ..." See *App. B at pages 26-27a.*

But, using the lower court's decision, the City could again modify their "condemnation process" to include a permanent taking of a condemned building, or even incarcerate the owner/occupants of a condemned building, and these actions would be considered "constitutional" since the City need only provide notice and hearing for just the condemnation of the building, (as outlined in the Massachusetts Sanitary Code), and not for any additional actions taken. The court's decision is in direct conflict with this Court, which held that the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest". *Mullan v. Central Hanover Bank & Trust Co,* 339 US 306, at 314-315 (1950).

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[2] The lower court acknowledges that the provided condemnation notice and hearing do not include the City's "practice" of seizing/physically taking possession of condemned buildings. See *App. B at page 17a.*

Furthermore, to justify the seizure of condemned buildings, the City would like this Court to believe that an "emergency" under the Massachusetts Sanitary Code always translates to an "emergency" under the Community Caretaking Doctrine, (which involve "situations posing an imminent serious threat to life or property". *Mincey v. Arizona,* 437 US 385 (1978)). But the record in the instant case clearly shows that the building was never a hazard to enter, as numerous City personnel entered the building on May 27th, (see *App. B at pages 6-7a*), and that the Petitioner was subsequently allowed access to the building weekdays, 9 am to 5 pm, (see *App. B at page 10a*), while the building was still in the City's possession; neither the lower court nor the City have explained why the Petitioner's access was denied/restricted to the building for six months. It is the Petitioner's assertion that the physical taking of condemned buildings, while now part of the City's condemnation process, is actually an unconstitutionally implemented Padlock Law, (which should be discontinued).

For all of the above reasons the Petitioner requests that this Honorable Court grants his petition for writ of certiorari.

Respectfully submitted,

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September 6, 2010